Remarks

Claims 1-23 are pending and under examination in the subject application.

Restriction Requirement

In the January 4, 2006 Office Action, the Examiner required restriction of the invention under 35 U.S.C. §121 to one of the following allegedly independent and distinct inventions characterized by the following Groups I-VI:

I. Claims 1-2, 4, 8-9 and 11, in part drawn to nucleic acids of SEQ ID NO:1;

II. Claims 1, 3, 5, 8-9 and 12, in part drawn to a nucleic acid of SEQ ID NO:3;

III. Claims 5, 13-14, 16 and 18-19 drawn to the polypeptide of SEQ ID NO:2;

IV. Claims 7, 13, 15 and 17-19 drawn to the polypeptide of SEQ ID NO:4;

V. Claim 10 in part drawn to an antisense molecule; and

VI. Claims 20-23 in part drawn to an antibody.

Further in the January 4, 2006 Office Action the Examiner required restriction of the elected group to one of the following molecular embodiments:

A. A single nucleic acid composition selected from SEQ ID NOS: 1 or 3;

B. A single polypeptide selected from SEQ ID NO:2 or 4; and

C. A single antibody selected from reactivity with SEQ ID NOs:2 or 4.

In the January 4, 2006 Office Action, the Examiner alleged that these inventions are distinct. The Examiner alleged that the restriction is deemed to be proper because the products indicated as A-C constitute patentably distinct inventions. The Examiner alleged that each of the antibodies, polynucleotides and polypeptides has a unique structural feature which requires a unique search of the prior art. The Examiner also alleged that the inventions indicated as A-C differ in structure and function as they are composed of divergent nucleic and amino acids and are differentially able to hybridize, bind or mediate biological functions. The Examiner alleged that a reference to one element would not constitute a reference to another. In addition, the Examiner alleged that searching all of the molecules in a single patent application would provide an undue search burden on the Examiner and the USPTO's resources because the indicated searches are not co-extensive.

Further in the January, 4, 2006 Office Action, the Examiner alleged that the inventions of Groups I-VI are related as products and that the products are distinct each from the other as the products are comprised of divergent structure and exhibit different effects and function. The Examiner also alleged that inventions of Groups I-VI are unrelated. The Examiner stated that inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions or different effects. The Examiner alleged that in the instant case the different inventions are not capable of use together as each has different structure and each is capable of different function.

In response, applicants elect, with traverse, claims 1-2, 4, 8-9 and 11 in part, corresponding to Group I, drawn to nucleic acids of SEQ ID NO:1. Applicants further elect, with traverse, the molecular embodiments of Group A.

Applicants, however, respectfully request that the Examiner reconsider and withdraw the restriction requirement of Group II from elected Group I for the reasons that follow.

Claims 1, 3, 5, 8-9 and 12 in part drawn to nucleic acids of SEQ ID NO:3, i.e. Examiner's purported Group II, should be examined together with elected claims 1-2, 4, 8-9 and 11 in part drawn to nucleic acids of SEQ ID NO:1, i.e. Examiner's purported Group I.

Applicants respectfully disagree with the Examiner's assertion of restrictable subject matter set forth in the January 4, 2006 Office Action. Under 35 U.S.C. §121, restriction may be required if two or more "independent and distinct" inventions are claimed in one

application.

Applicants maintain that the inventions of Groups I-II are not independent. Under M.P.E.P. §802.01, "independent" means there is no disclosed relationship between the subject matter claimed. The claims of Group I and Group II are both drawn to purified polynucleotides which encode STR50. The polynucleotide of Group I, SEQ ID NO:1, and the polynucleotide of Group II, SEQ ID NO:3, are two splice variants of the same gene and are derived from the same locus in the genome. Accordingly, applicants maintain that Groups I-II are not independent and restriction is not proper.

Furthermore, under M.P.E.P. §803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to distinct inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent or distinct, and (2) there must be a serious burden on the Examiner if restriction were not required.

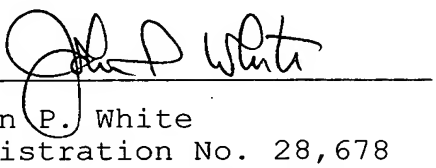
Applicants respectfully submit that there would not be a serious burden on the Examiner if restriction were not required, because there is no burden on the Examiner to search an additional polynucleotide sequence which encodes for the same protein, is a splice variant of the same gene and is derived from the same locus in the genome. Therefore, there is no burden on the Examiner to examine Groups I-II together in the subject application.

In view of the foregoing, applicants maintain that restriction is not proper under 35 U.S.C. §121, and respectfully request that the Examiner reconsider and withdraw the requirement for restriction.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee, other than the enclosed $1590.00 fee for a four-month extension of time, is deemed necessary in connection with the filing of this Communication. However, if any other fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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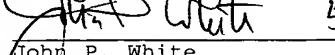

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John P. White — Date

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